a stock of goods to sell the goods in the regular course of trade, does not of itself avoid the mortgage. *Louden v. Vinton,* 108 Mich. 313; *Fletcher v. Powers,* 131 Mass. 333. Those cases in harmony with the principal case make a mortgage void as to creditors when the mortgagor remains in possession disposing of the mortgaged goods in the usual course of business without accounting in any manner to the mortgagee. *Gee v. Van Natta Lynds Drug Co.,* 105 Mo. App. 27; *Gillespie v. McClaskie,* 160 Ala. 289. And in the latter cases the recording of the mortgage cannot make it valid, for the recording of a mortgage is merely constructive notice of its terms and when the mortgage includes the right of disposition for the use and benefit of the mortgagor, it is deemed fraudulent in law. *Zartman v. First National Bank,* 189 N. Y. 267. But where a power of sale contained in a mortgage covers only a part of the property subject thereto, it is generally held that though mortgage is void in part, it is valid as to the property not included in the power of sale. *Cook v. Halsell,* 65 Tex. 1. It should be noted that the holding of the principal case does not apply when mortgage stipulates that the mortgagor is required to account to the mortgagee for the proceeds of the sale which proceeds are to be applied in payment of the debt. *Skilton v. Codington,* 185 N. Y. 80; *Dunham v. Stevens,* 160 Mo. 95; *Stevens v. Curran,* 28 Mont. 366.

CONTRACTS—CONSIDERATION—LEGAL DUTY TO THIRD PERSON.—POETKER v. LOWRY, 144 PAC. (CAL.) 981.—*Held,* that a promise to perform a preëxisting duty to a third person is no consideration for a second promise.

It is agreed that the performance of, or the promise to perform, an existing legal duty to the promisor is no consideration to support a promise. *Lingenfelder v. Brewing Co.,* 103 Mo. 578. The minority of cases which seem to override this rule, do so upon the theory of an abrogation in some manner of the previous contract. *Munroe v. Perkins,* 9 Pick. (Mass.) 298. Or upon the erroneous theory of a surrender by the promisee of the alleged alternative privilege of incurring damages rather than performing in specie. *Lattimore v. Harsen,* 14 Johns. (N. Y.) 330. The rule is generally stated as applying also to legal duties to persons other than the promisor. *Kenigsberger v. Wingate,* 31 Tex. 42; *Sherwin v. Brigham,* 39 Oh. St. 137; *Johnson v. Seller,* 33 Ala. 265. In the case of non-contractual duties, it has not been necessary so to decide, as the illegal character of the consideration would be an all-sufficient ground. Accordingly, in such cases, courts often proceed upon the illegality, rather than upon the absence, of consideration. *Voorhees v. Reed,* 17 Ill. App. 21; *Warner v. Grace,* 14 Minn. 487. And many of the decisions in apparent accord with the principal case might well have gone upon the ground of a preëxisting legal obligation to the promisor himself. *Arend v. Smith,* 151 N. Y. 502; *Drill Co. v. Ashhurst,* 148 Ill. 115. The majority doctrine has, of course, no application in the case of an absolute undertaking to perform what one was only conditionally obligated to a third person to do. *Green v. Kelly,* 64 Vt. 309. Several deviations from the prevalent

doctrine are to be noted. First, a promise to perform a preëxisting contractual obligation to a third person, as distinguished from performance itself, has been admitted as sufficient consideration. *Merrick v. Giddings,* 1 Mack. (D. C.) 394. Second, where the second promisor has a direct interest in the performance of the original undertaking, such performance or promise to perform is sufficient consideration. *Donnelly v. Newbold,* 94 Md. 220; *Hirsch v. Carpet Co.,* 82 Ill. App. 234; *Hamer v. Decatur Co.,* 98 Ala. 461. Third, in a few jurisdictions the doctrine of the principal case has been repudiated altogether. *Abbott v. Doane,* 163 Mass. 433; *Scotson v. Pegg,* 6 H. & N. 295; *Champlain Co. v. O'Brien,* 117 Fed. 271; *Wilhelm v. Foss,* 118 Mich. 106 (point not discussed). See *Day v. Gardner,* 42 N. J. Eq. 199. On principle there seems no reason why either a performance, or a promise to perform, should not be a sufficient, if legal, consideration, if it be something which the second promisor wished to procure in return for his promise, and to which he had previously no legal right, whatever may have been the previous rights of third parties thereto.

CONVERSION—CUTTING TIMBER—MEASURE OF DAMAGES.—SIBELLE V. EASTHAM, 67 So. (LA.) 364.—*Held,* that one who cuts timber on the land of another in good faith, believing it to be his own land, is liable for the value of the timber before the cutting, and not as manufactured into lumber.

When property is severed from the freehold and converted by the defendant, the prevailing view is that if the defendant acted in good faith, the measure of damages is the value of the property as it was just before the wrongful act of the defendant. *Forsyth v. Wells,* 41 Pa. 291; *Bond v. Griffen,* 74 Miss. 599; *U. S. v. McKee,* 128 Fed. 1002; *Wood v. Morewood,* 3 Q. B. 440. Certain American courts, however, have allowed recovery of the whole value of the property, after its severance. In the case of *Brown v. Sax,* 7 Cow. (N. Y.) 95, Sutherland J., *dissenting,* the facts were the same as in the principal case, and the plaintiff recovered the value of the boards manufactured from the lumber. In the following cases the measure of damages was held to be the value of the logs just after they were felled. *White v. Yawkey,* 108 Ala. 270; *Moody v. Whitney,* 38 Me. 174; *U. S. v. St. Anthony R. Co.,* 192 U. S. 524. Where the defendant knowingly converted property severed from the plaintiff's land, the measure of damages is everywhere held to be the value of the property at the time of the conversion, that is, after the severance. *Meloon v. Read,* 73 N. H. 153; *Foster v. Weaver,* 118 Pa. 42; *Wooden Ware Co. v. U. S.,* 106 U. S. 432. The rule of the principal case seems the just view, since it restricts the plaintiff to compensation for his actual loss, where the defendant has acted in good faith.

CRIMINAL LAW—ASSAULT AND BATTERY—EXCESSIVE SPEED OF AUTOMOBILE—STATE V. SCHUTTE, 93 ATL. (N. J.) 112.—*Held,* that a conviction for assault and battery was sustained by proof that the defendant ran